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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,936	06/27/2003	Joseph Musacchio	741287-30	4445
78198	7590	07/28/2008		
Studebaker & Brackett PC 1890 Preston White Drive Suite 105 Reston, VA 20191			EXAMINER MCCORMICK, GABRIELLE A	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 07/28/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/606,936

**Applicant(s)**

MUSACCHIO, JOSEPH

**Examiner**

GABRIELLE MCCORMICK

**Art Unit**

3629

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16, 21-25, 28-41, 51-55, 58-71, 79 and 80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 21-25, 28-41, 51-55, 58-71, 79 and 80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Status of Claims*

1. This action is in reply to the Request for Continued Examination filed on July 2, 2008.
2. Claims 1, 2, 4, 21 and 51 have been amended.
3. Claims 17-20, 26-27, 42-50, 56-57, 72-78 and 81-82 have been canceled.
4. Claims 1-16, 21-25, 28-41, 51-55, 58-71 and 79-80 are currently pending and have been examined.

### *Previous Objections to the Drawings*

5. Replacement drawings have been received. The previous objection is withdrawn.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5-10, 16, 21, 28-35, 41, 51, 58-65, 71 and 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almog et al. (US Pub. No. 2002/0002479, hereafter referred to as "Almog") in view of PR Newswire ("ComputerJobs.com Revolutionizes IT Career Management with New Skill Sites". PR Newswire. New York: Sep 22, 1999. pg.1).
8. **Claim 1:** Almog discloses
  - *an employment salary database having current salary data with associated skill information, said current salary data including job listings and employment histories from resumes;* (P[0088]: salary data from job-opening database (P[0062]: job-openings from newspapers are scanned into the database) and P[0049-0054]: the worker profile collects work history

data and is organized "like a CV" (i.e., resume) and P[0139]: a CV is prepared based on the worker profile, thus salary data includes employment histories from resumes.)

- *a user interface module adapted to allow a user to input employment parameter information including at least one specific skill; (Fig. 4)*
- *a processor adapted to generate a functional matched data set by searching said employment salary database to identify current salary data having said user inputted specific skill and a skill level associated thereto, and generate salary information based on said current salary data of said skill matched data set; (P[0115-116]; [0127]: an employer queries to obtain salary information based on a job opening and worker profiles. P[0113]: salary is a function of the qualifications of a worker. Thus, as the worker profile contains skill and skill level data, and differing salaries are offered based on qualifications, the search for salary data generates information based on the worker profile data (including skill, skill level and salary data) entered by the user.)*

9. Almog does not disclose a ticker adapted to display various salary related data.
10. PR Newswire, however, in page 2, paragraph 8, discloses a salary tracking ticker displaying "high, low and average salaries or hourly wages in a specific skill-set area, giving users timely information to gauge their own salaries". Thus, as Almog discloses updating the databases in real time (P[0039]), the ticker is updated periodically.
11. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a salary tracking ticker, as disclosed by PR Newswire in the system disclosed by Almog, for the motivation of "giving users timely information to gauge their own salary expectations." (PR Newswire; pg. 2; para. 8). A ticker displaying the "going rate of workers" disclosed by Almog provides a user-friendly graphical instrument to display information.
12. Note: System claims are limited by the structure of the system, not the functionality. The ticker disclosed by PR Newswire is capable of displaying various salary related data, thus discloses a ticker as recited in claim 1.
13. **Claims 21 and 51:** Almog discloses

- *providing an employment salary database having current salary data with associated skill information, said current salary data including job listings and employment histories from resumes; (P[0088]: salary data from job-opening database (P[0062]: job-openings from newspapers are scanned into the database) and P[0049-0054]: the worker profile collects work history data and is organized "like a CV" (i.e., resume) and P[0139]: a CV is prepared based on the worker profile, thus salary data includes employment histories from resumes.)*
  - *providing a user interface module adapted to allow a user to input employment parameter information including at least one specific skill; (Fig. 4)*
  - *providing a skill matched data set by searching said employment salary database to identify current salary data having said user inputted specific skill and a skill level associated thereto, and generating salary information based on said current salary data of said skill matched data set; (P[0115-116]; [0127]: an employer queries to obtain salary information based on a job opening and worker profiles. P[0113]: salary is a function of the qualifications of a worker. Thus, as the worker profile contains skill and skill level data, and differing salaries are offered based on qualifications, the search for salary data generates information based on the worker profile data (including skill, skill level and salary data) entered by the user.)*
14. Almog does not disclose a ticker that displays said skill level, a current direct labor hourly rate, a high direct labor hourly rate, a low direct labor hourly rate, an amount of change in said current direct labor hourly rate from a previous direct labor hourly rate, a markup amount of fees charged by the employment agency as a percentage of the direct labor hourly rate, a current hourly bill rate that includes the markup amount, and an amount of change in said current hourly bill rate from a previous hourly bill rate, said ticker being updated periodically to provide current real-time salary information.
15. PR Newswire, however, in page 2, paragraph 8, discloses a salary tracking ticker displaying "high, low and average salaries or hourly wages in a specific skill-set area, giving users timely information to gauge their own salaries". Thus, as Almog discloses updating the databases in real time (P[0039]), the ticker is updated periodically.

16. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a salary tracking ticker, as disclosed by PR Newswire in the system disclosed by Almog, for the motivation of "giving users timely information to gauge their own salary expectations." (PR Newswire; pg. 2; para. 8). A ticker displaying the "going rate of workers" disclosed by Almog provides a user-friendly graphical instrument to display information.
17. PR Newswire does not disclose the change in labor rates, a markup amount, an hourly bill rate or a change in the hourly bill rate, however, these differences are only found in the **nonfunctional descriptive data** and are not functionally involved in the steps recited. **The display of data by the ticker would be performed regardless of names of the data.** Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included displaying various salary related data because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of names of data fields for display does not patentably distinguish the claimed invention.
19. **Claims 5-10, 28-35 and 58-65:** Almog discloses job titles and location information (Fig. 4). Salary data is generated based on job title and location.(P[0094]: users query for the rate of change in certain positions (i.e., job titles) and locations.)
20. **Claims 16, 41 and 71:** Almog discloses an average salary. (P[0075]).
21. **Claims 79 and 80:** Almog discloses performing a relational match on the current salary data. (P[0115-116]; [0127]: an employer queries to obtain salary information based on a job opening and worker profiles.)
22. **Claims 2-4, 22-25 and 52-55** are rejected under 35 U.S.C. 103(a) as being unpatentable over Almog et al. (US Pub. No. 2002/0002479, hereafter referred to as "Almog") in view of PR Newswire ("ComputerJobs.com Revolutionizes IT Career Management with New Skill Sites". PR

Newswire. New York: Sep 22, 1999. pg.1) in view of Davis ("The future of salary surveys when jobs disappear". Compensation and Benefits Review. Saranac Lake: Jan/Feb 1997. Vol. 29, Iss. 1; pg. 18).

23. **Claims 2-4, 22-25 and 52-55:** Almog discloses statistical measurement of the results, including the percentages of workers who fall within different salary ranges (i.e., percentile salary ranges, thus generating salary data based on salary ranges. (P[0075]). Almog does not explicitly disclose skill level categories or correlation of salary ranges to skill level categories.
24. Davis, however, discloses developing salary ranges for skill-based pay programs, exemplified by exhibit 10 which shows the "span of pay for a given level (apprentice, journey, master) within a defined trade..." (pg. 7; para. 5). Additionally, Exhibit 9 discloses correlating skill level categories to percentile salary ranges.
25. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included correlating skill level categories to percentile salary ranges, as disclosed by Davis in the system disclosed by Almog, for the motivation of providing a method of designing a compensation system that "is based on flexible work assignments related to employee skill levels..." (Davis; pg. 2; para. 2). As Almog has already disclosed determining percentages of workers within different salary ranges, it is obvious to regard the workers alternatively as sets of skills and skill levels, as provided in Fig. 4 of Almog, thus resulting in the correlation of skill levels and salary ranges.
26. **Claims 11-15, 36-40 and 66-70** are rejected under 35 U.S.C. 103(a) as being unpatentable over Almog et al. (US Pub. No. 2002/0002479, hereafter referred to as "Almog") in view of PR Newswire ("ComputerJobs.com Revolutionizes IT Career Management with New Skill Sites". PR Newswire. New York: Sep 22, 1999. pg.1) in view of Brady et al. (US Pat. No. 6,463,430, hereinafter referred to as "Brady").
27. **Claims 11-15, 36-40 and 66-70:** Almog discloses a database that store worker records, including salary information (P[0019]), scanning job-openings from newspapers into the database

(P[0062]) and the capability to text parse to categorize information, but does not disclose data mining.

28. Brady, however, discloses a "harvester" that is a computer program that extracts information from a document. (i.e., the data is mined). (C4; L17-21). Content is classified and stored in a database. (C4; L37-47). Information of interest to a potential employer or recruiter is extracted, including employment history, salary history, skills used and qualifications. (C8; L47-67).
29. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included data mining, as disclosed by Brady, in the system disclosed by Almog, for the motivation of providing a method of extracted pertinent salary data from job openings and resumes. Almog would be motivated to expand its system to include data mining in order to extract and classify the information from the job-openings. Additionally, Almog would be motivated to expand its system to extract data from resumes as an alternative to a worker completing a profile in order to run salary queries.

### ***Response to Arguments***

30. Applicant's arguments with respect to claims 1, 21 and 51 have been considered but are moot in view of the new ground(s) of rejection.
31. With Applicant's amendment, careful consideration of Almog showed disclosures of obtaining current salary data from both employment histories and job listings, therefore, Applicant's arguments with regard to the motivation to combine Vivona and Almog are moot.
32. However, Applicant asserts that Almog "does not suggest the use of a skill level indicating the level of experience and/or expertise with respect to the specific skill on which a functional skill matched data set of employment salary history is based." (Remarks; page 15; para. 1). The Examiner disagrees. First, Applicant has not claimed skill level as indicating experience and/or expertise with respect to a specific skill, thus Almog's teaching in Fig. 4 of skills by language and levels discloses the limitation of a specific skill and skill level. Further, Almog discloses



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generating salary data based on the worker profiles, i.e., the data of Fig. 4. Thus, the generated salary data is based upon the skills and skill levels.

33. Though now moot, with regard to Applicant's assertion that Vivona teaches away from using multiple sources, the Examiner disagrees. The disclosure of a preferred embodiment **does not** denote a teaching away.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GABRIELLE MCCORMICK whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. M./  
Examiner, Art Unit 3629

/John G. Weiss/  
Supervisory Patent Examiner, Art Unit 3629